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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0118]**

**RIN 1625-AA11**

### **Regulated Navigation Area; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a regulated navigation area for certain waters of the Monongahela, Allegheny, and Ohio Rivers near Pittsburgh, Pennsylvania. This action is necessary to provide for the safety of persons, vessels, and the marine environment on these navigable waters due to the high volume of vessels navigating the area. This proposed rulemaking would prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting more than 100 feet from any river bank in the regulated navigation area unless authorized in order to reduce vessel congestion and provide for safe passage of transiting vessels in the center of the rivers. It would also prohibit persons and vessels from loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes the safe passage of another vessel to any launching ramp, marine, or fleeting area unless authorized. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or

before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE  
FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0118 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LT Shawn Simeral, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412-221-0807, email [Shawn.C.Simeral@uscg.mil](mailto:Shawn.C.Simeral@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Marine Safety Unit Pittsburgh
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MSU	Marine Safety Unit
NPRM	Notice of proposed rulemaking
§	Section
USACE	U.S. Army Corps of Engineers
U.S.C.	United States Code
RNA	Regulated Navigation Area

**II. Background, Purpose, and Legal Basis**

The Coast Guard proposes to establish a Regulated Navigation Area (RNA) for certain waters of the Monongahela, Allegheny, and Ohio Rivers near Pittsburgh, Pennsylvania. The confluence of these three rivers is a high traffic area for both commercial and recreational vessels. It is also a destination for recreational vessels to anchor and loiter during the summer months due to the proximity of multiple entertainment venues. The Coast Guard is concerned about the potential for collisions

between commercial and recreational vessels and the impact of vessel congestion on maritime commerce in this area. A Map/Chartlet depicting the area, as well as images depicting the severe vessel congestion in this area, are included where indicated in the docket under **ADDRESSES**.

A. The Point of Pittsburgh

The Point of Pittsburgh is located at the confluence of the Allegheny, Monongahela, and Ohio Rivers, and is surrounded by the city of Pittsburgh, PA. The city of Pittsburgh is located in the Emsworth pool, often referred to as the “Pitt Pool,” which forms the 24-mile pool around the city.<sup>1</sup> The Emsworth pool is the water area from upriver of the Emsworth Locks and Dam on the Ohio River, to Lock 2 on the Allegheny River and to the Braddock Locks and Dam on the Monongahela River. In 2016, the U.S. Army Corps of Engineers (USACE) ranked the Port of Pittsburgh fourth among inland waterway ports and 31st among ports in the United States for tonnage traffic. The area around the Point of Pittsburgh also includes eight highway bridges. These bridges create navigation limitations for tows and passenger vessels due to piers and overhead clearance.

In addition, the Port of Pittsburgh contains 27 marinas and has 21 public boat landings, and the Pitt Pool contains 12 marinas and three public boat launches. Over the past three years, an average of 7,860 recreational boats transited through the three locks of the Pitt Pool annually. The Point of Pittsburgh area contains multiple entertainment venues near the riverfront that include: a National Football League stadium, Major League Baseball stadium, casino, United Soccer League stadium, amphitheater, state

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<sup>1</sup> “Pool” is a term used to describe the area between navigation dams of the rivers.

park, science center, museums, convention center, and various memorials, monuments, trails, and restaurants.

B. The Marine Community Concerns

A wide variety of both commercial and recreational traffic transit the rivers around the Point, including: barges and tow boats in transit up bound on the Allegheny and Monongahela rivers, and down bound on the Ohio River, ferries to the North Shore of the Ohio River for events, passenger vessel cruises, and recreational craft. Due to the heavy concentration of entertainment activities, the Point of Pittsburgh is a destination for recreational craft to moor, anchor, or drift in the area. Recreational vessels will often raft off to one another from the shore or from an anchored vessel, creating congestion and hazardous conditions for less maneuverable vessels transiting the river current.

During a Passenger Vessel Association Rivers Region Meeting in November of 2016, participants notified Coast Guard Marine Safety Unit (MSU) Pittsburgh of navigation and safety issues involving vessel congestion near the Point of Pittsburgh during the summer months. As a result, MSU Pittsburgh formed a Congested Waterways Committee that meets monthly to investigate the congestion issue and discuss concerns regarding use of the waterway. The committee includes: tow boat operators, commercial passenger vessel operators, port executives, safe boating council members, industry representatives, and members from local recreational boat associations, along with representatives of the Coast Guard Auxiliary, USACE, and city and state law enforcement officials.

MSU Pittsburgh learned that during summer months, especially on weekends, large numbers of recreational vessels anchor or drift in the vicinity of the Point of

Pittsburgh, which created an unsafe navigation situation for the larger commercial vessels utilizing the waterway. Some of the participants discussed several near misses between commercial and recreational vessels, but currently there is no standard definition of a near miss as it pertains to this issue, nor has it been tracked. MSU Pittsburgh received comments about the dangers of recreational vessels anchoring or drifting near the sailing line<sup>2</sup>, and conversely, about the dangers of commercial vessels that seem to expect vessels to give way as a matter of course. The local ferries also expressed concerns regarding vessels blocking the approaches to their loading areas.

Several commercial vessel representatives were frustrated that recreational vessel users are not all required to have knowledge of navigation rules prior to operating a vessel.<sup>3</sup> They also stated that during times of congestion, commercial vessels will often halt transit of vessels or limit passenger vessel cruise areas rather than proceed into potentially unsafe transit conditions. These events have a negative impact on their businesses. Industry representatives discussed their vessel size, stopping limitations, limited maneuverability, and proximity to bridges as reasons they consider transit during congestion as unsafe. They stated that recreational vessels often maneuver very close to their vessels or cross in front as they transit. Everyone agreed that the three rivers of Pittsburgh should be able to be used by both commercial and recreational vessels, and that the safety of the waterways users should be the top priority.

### C. Special Local Regulations

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<sup>2</sup> The phrase “sailing line” is defined as the middle of the river as marked on the USACE river charts.

<sup>3</sup> Pennsylvania law states any person born on or after January 1, 1982, shall not operate, on the waters of this Commonwealth, a motorboat without first obtaining a certificate of boating safety education.

During the summer of 2018, MSU Pittsburgh was notified of two outdoor concerts at Heinz Field. Due to the proximity of the stadium to the Ohio River, large concentrations of recreational vessels were anticipated throughout concert weekends. To mitigate the navigational impact, MSU Pittsburgh permitted these concerts as marine events and established temporary Special Local Regulations to maintain a safe and clear navigation area during the concert weekends.

On April 17, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Monongahela (MM 0.22), Allegheny (MM 0.8), and Ohio Rivers (0.8), Pittsburgh, PA (83 FR 16808) for the Luke Bryan concert. There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the concert. During the comment period that ended on May 2, 2018, we received no comments. On May 18, 2018, the Coast Guard published a temporary final rule establishing the Special Local Regulation (83 FR 23218).

On April 19, 2018, the Coast Guard published an NPRM titled Special Local Regulation; Monongahela, Allegheny, and Ohio Rivers, Pittsburgh PA (83 FR 17333) for the Kenny Chesney concert. There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the concert. During the comment period that ended May 4, 2018, we received no comments. On May 18, 2018, the Coast Guard published a temporary final rule establishing the Special Local Regulation (83 FR 23224).

Both temporary Special Local Regulations prohibited persons and vessels from loitering, anchoring, stopping, or drifting more than 100 feet from any riverbank or act in a manner that impedes the passage of another vessel to any launching ramp, marina, or

fleeting area. In advance of the concert weekends, MSU Pittsburgh conducted outreach/education. MSU Pittsburgh provided flyers to the three locks and dams of the Pitt Pool to be given to boaters entering the pool throughout the concert weekends. Coast Guard and Coast Guard Auxiliary patrols also provided flyers to boaters in the Pitt Pool during the concerts. MSU Pittsburgh personnel participated in news media interviews with two local TV stations and one local newspaper. According to the USACE, 529 recreational and 133 commercial vessels transited through the locks of the Pitt Pool throughout the concert weekends. Additionally, 316 passenger vessel trips were conducted in close proximity to Heinz Field. Despite the concentration of vessels, both recreational and commercial vessels were able to transit safely throughout the weekend, and positive feedback was received from industry, other government agencies, and recreational representatives.

This NPRM proposes to establish an RNA using the same waterway controls as were used in the previous Special Local Regulations. While these Special Local Regulations were effective in mitigating the hazards of heavy congestion in and around the Pitt Pool during said events, a more permanent solution is required to handle the consistently heavy traffic throughout peak boating season. The heavy congestion conditions addressed by the Special Local Regulations are present throughout the summer months, and it would be exceptionally laborious for MSU Pittsburgh personnel to establish individual Special Local Regulations to mitigate every instance. The Coast Guard feels that a permanent RNA is the most effective solution for mitigating the dangers of heavy congestion, using proven methods, with minimal impacts to vessel traffic operating under normal waterway conditions.

The purpose of this rulemaking is to ensure the safety of persons, vessels, and the marine environment on the navigable waters of the Monongahela, Allegheny, and Ohio Rivers near Pittsburgh, Pennsylvania. The Commander of the Eighth Coast Guard District has determined that potential hazards associated with the risk of collision in this area would be a safety concern for any vessel loitering, anchoring, stopping, or drifting more than 100 feet from a riverbank or in a manner that impedes the passage of another vessel to any launching ramp, marina, or fleeting area. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The District Commander proposes to establish a regulated navigation area for all navigable waters of the Allegheny, Monongahela, and Ohio Rivers between the Ninth Street Highway Bridge at mile marker (MM) 0.8 of the Allegheny River, Fort Pitt Highway Bridge at MM 0.22 of the Monongahela River, and West End-North Side Highway Bridge at MM 0.8 of the Ohio River. This proposed rule would apply to any vessel operating within the area, including a naval or public vessel, except a vessel engaged in law enforcement, servicing aids to navigation, or surveying, maintaining, or improving waters within the regulated area. No vessel would be permitted to loiter, anchor, stop, moor, remain or drift in any manner that impedes safe passage of another vessel to any launching ramp, marina, or fleeting area unless authorized by the COTP or a designated representative. In addition, no vessel or person would be permitted to loiter, anchor, stop, remain, or drift more than 100 feet from any riverbank unless authorized by the COTP or a designated representative. They may be contacted on VHF-FM Channel 16.



On the other hand, this rule allows vessels and people to loiter, anchor, stop, remain, or drift within the regulated area so long as they are within 100 feet of the shore or riverbank. By requiring all vessels to loiter, anchor, stop, remain, or drift only within 100 feet of the riverbanks, the center of the rivers are less likely to be obstructed for navigating vessels. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and impact of the regulated navigation area. The regulated navigation area uses minimally intrusive guidelines for vessel operation designed to improve the safety of navigation on the waters of the area. This regulated navigation area does not meet any of the criteria for a

significant regulatory action under Executive Order 12866.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated navigation area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that

question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted

for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated navigation area that prohibits loitering, anchoring, stopping, mooring, remaining, or drifting in any manner that impedes safe passage of another vessel to any launching ramp, marina, or fleeting area. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION**

**CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will

consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS  
AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034; 46 U.S.C. 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.823 to read as follows:

**§ 165.823 Allegheny River, Monongahela River, and Ohio River, Pittsburgh, Pennsylvania; Regulated Navigation Area**

(a) *Location.* The following is a regulated navigation area (RNA): the waters of the Allegheny, Monongahela, and Ohio Rivers between the Ninth Street Highway Bridge at mile marker (MM) 0.8 on the Allegheny River, Fort Pitt Highway Bridge at MM 0.22 on the Monongahela River, and West End-North Side Highway Bridge at MM 0.8 on the Ohio River.

(b) *Applicability.* This section applies to any vessel operating within the RNA, including a naval or public vessel, except a vessel engaged in:

- (1) Law enforcement;
- (2) Servicing aids to navigation; or
- (3) Surveying, maintaining, or improving waters within the RNA.

(c) *Regulations.* (1) No vessel shall loiter, anchor, stop, moor, remain or drift at any time more than 100 feet from any river bank within the RNA without permission of the Captain of the Port (COTP), or any Coast Guard commissioned, warrant, or petty

officer who has been designated by the COTP to act on his or her behalf.

(2) No vessel shall loiter, anchor, stop, moor, remain or drift in any manner as to impede safe passage of another vessel to any launching ramp, marina, or fleeting area.

Dated: June 11, 2019

Paul F. Thomas  
RADM, U.S. Coast Guard,  
Commander, Eighth Coast Guard District.

[FR Doc. 2019-13932 Filed: 6/28/2019 8:45 am; Publication Date: 7/1/2019]